

Clean and Shine and Union Trabajadores Industriales De Puerto Rico. Case 24-CA-4341

April 21, 1981

ORDER DENYING MOTION

On December 5, 1980,¹ the Board issued a Decision and Order² in this case in which it granted the General Counsel's Motion for Summary Judgment on the ground that Respondent Clean and Shine had failed to file an answer to the complaint and found that Respondent had violated Section 8(a)(1) and (3) of the Act, as alleged in the complaint.³ Thereafter, on December 23, Respondent, in an untimely manner, filed a brief with the Board opposing the General Counsel's Motion for Summary Judgment.⁴ In its brief, Respondent contends that the Board lacks jurisdiction over it but that, for the reasons stated below, it has not been afforded the opportunity to present evidence in support of its contention.

Thus, Respondent asserts that its failure to file an answer to the complaint was the result of a mistaken belief that the proceedings before the Board were related to a separate matter which it had pending before the Department of Labor. Furthermore, it claims that upon discovering its error on or about September 10, it immediately sought the advice of a Board agent who allegedly informed Respondent that "it was too late, that nothing could be done and that [Respondent] should not even be bothered in writing to Washington since Washington is pro-labor and any position would therefore be answered in the negative." Respondent asserts it relied on that "advice" and told the Board agent to figure out how much it owed.⁵ In view of the above, Respondent contends that the Board should vacate its Decision and Order in this case and either deny the General Counsel's Motion for Summary Judgment and dismiss the complaint in its entirety or direct that a hearing be held so that Respondent could present evidence establishing the Board's lack of jurisdiction over it. We find no merit to Respondent's contention.

On the basis of the above facts, which are derived solely from Respondent's brief, it is apparent

that Respondent's admitted failure to answer the complaint was the result of its own negligence. Thus, the complaint and notice of hearing, which was duly served on Respondent, clearly states that the proceedings herein had been instituted by the General Counsel of the National Labor Relations Board, that a hearing would be held at a hearing room located at the Board's Regional Office at the time and date specified therein, and that an answer to the complaint was required. Furthermore, in a subsequent letter containing the address and telephone number of the Board's Regional Office, the Regional Director advised Respondent that it had failed to answer the complaint as required and further advised that, if Respondent did not file an answer by the time specified in the letter, the General Counsel would move for a default judgment against it. Under these circumstances, we find that Respondent knew or should have known that the Board proceedings were in no way related to the proceeding which it purportedly had pending before the Department of Labor and that Respondent's failure to file an answer based on that mistaken belief cannot constitute good cause under the Board's Rules and Regulations.⁶

We also find no merit to the argument that Respondent's failure to file a timely answer to the Board's Notice To Show Cause is excused by its reliance on the Board agent's alleged misrepresentations. In this regard, we note that aside from the bare assertions made in its brief, which was submitted by Respondent's attorney, no supporting affidavit from the person to whom these alleged misrepresentations were made was submitted by Respondent in support of this allegation. Furthermore, assuming *arguendo* that the alleged misrepresentations were in fact made, Respondent, as noted above, had been duly served with a Notice To Show Cause advising it that a response to the General Counsel's Motion for Summary Judgment was due by September 19, 9 days hence. Under these circumstances, we find that Respondent had been put on notice of what was required of it to oppose the summary judgment, and thus was in a position to determine that the Board agent's remarks were incorrect⁷ and that in fact it still had sufficient time in which to file a timely response. Additionally, we note that, even after having been afforded two separate opportunities in which to file an answer to the complaint and after having learned that the in-

¹ All dates hereinafter are in 1980, unless otherwise indicated.

² 253 NLRB 610.

³ On September 5, the Board had issued to Respondent a Notice To Show Cause, by September 19, why the General Counsel's Motion for Summary Judgment should not be granted. Respondent having failed to reply to the Notice To Show Cause, the Board, pursuant to Sec. 102.20 of its Rules and Regulations, Series 8, as amended, deemed all of the allegations in the complaint to be admitted as true.

⁴ In view of the nature of the allegations raised by Respondent in its brief (discussed *infra*) and inasmuch as the brief was filed within the period of time allowed for the filing of a motion for reconsideration, we have decided to treat this as a motion for reconsideration of the Board's Decision and Order cited in fn. 2, *supra*.

⁵ Apparently Respondent was not represented by counsel at the time.

⁶ See Sec. 102.20 of the Board's Rules and Regulations, Series 8, as amended.

⁷ See *Capitol Temptrol Corporation*, 243 NLRB 5751 (1979), and *Stokely-Van Camp, Inc., and Bordo Products Co., d/b/a Stokely-Bordo*, 130 NLRB 869 (1961), in which the Board, *inter alia*, held that it is not bound to any informal or personal advice given by Board agents to parties involved in Board proceedings.

stant proceedings were not related to the Department of Labor matter, Respondent did not file, nor request permission to file, a late answer to the complaint.⁸ Moreover, Respondent, by its own admission, did not attempt to seek legal counsel until recommended to do so by a Board agent during a conference held on November 17 on an unrelated representational matter.⁹ In view of the foregoing,

⁸ Nor has it done so to this date.

⁹ According to Respondent, during the November 17 conference held in Case 24-RC-6556, the Board agent in charge, noting Respondent's unfamiliarity with Board proceedings, asked Respondent if it was represented by counsel. When Respondent replied in the negative, the conference was postponed until the following day to allow Respondent an opportunity to retain legal counsel. The following day, Respondent appeared

we find that Respondent has offered no valid reasons why the Board's Decision and Order in this case should be vacated and we shall, accordingly, deny its motion for reconsideration.

It is hereby ordered that Respondent's motion for reconsideration be, and it hereby is, denied as lacking in merit.

with its attorney and, for the first time, questioned the Board's jurisdiction over it. Prior to a hearing, the petition in Case 24-RC-6556 was withdrawn and Respondent, contending that it was denied the opportunity to present evidence in support of its jurisdictional argument, has, with its brief, submitted evidence which it contends establishes the Board's lack of jurisdiction over it. However, having carefully considered the evidence submitted by Respondent, we find that it fails to establish that the Board lacks jurisdiction over it. Consequently, we find Respondent's contention in this regard to be without merit.